

## OPINION

## BACKGROUND INFORMATION

This matter was heard on May 24 and 25, 2001 whereupon the following facts were undisputed. The child in question was born on [REDACTED] and entered Centerville Elementary School in 1994. The child had been physically and sexually abused and removed from her natural parent's home and placed in foster care.

During the 1998 school year and even before the child had begun to have behavioral problems while at school. The child was initially receiving services from the school system because she was hearing impaired.

In February 1999 the child was evaluated by Dr. Mark Sigler a licensed school psychologist for the purpose of a behavioral assessment. Dr. Sigler's opinion was, at that time, that the child had no disability due to behavior. Dr. Sigler's report indicated "the child did not appear unhappy or depressed, although socially maladjusted" she was not to the extent she was unable to build or maintain satisfactory relationships with peers, teachers or other persons" (Exhibit 27).

Subsequent to this evaluation the child began to experience further behavioral problems. On May 18, 1999 the child was accused of attacking a fellow student and being verbally abusive to the bus driver and the Assistant Principal (Exhibit 7). A petition was filed in Juvenile Court by the Principal Jean Gregory

on September 13, 1999 alleging the child was unruly by failing to comply with the teacher or principal (Exhibit 9). The child was at this time also removed from the foster parent's home by the Department of Human Services. The police were summoned to the school to take the child into custody. On September 20, 1999 the Juvenile Judge, at one of the proceedings, had advised the school system to conduct a Multidisciplinary Team (M-Team) meeting to determine if the child's behavior was a result of her handicapping condition (Exhibit 15). On October 8, 1999 the child received another incident report from school by the Principal for an altercation which occurred on the bus with the bus driver (Exhibit 10). Subsequently, the child was suspended or reprimanded on a number of occasions.

In October 1999 the M-Team reconvened and determined that the child's behavior "was not to be a manifestation of her disability (hearing impaired)" (Exhibit 11). The M-Team indicated that a functional behavioral assessment had been conducted. The school system then had a new evaluation conducted by Dr. Sigler on May 30, 2000. On re-evaluation Dr. Sigler opined that the child "appeared to exhibit an emotional disturbance based on a tendency to develop physical symptoms or fears associated with personal or school problems (Exhibit 37). Dr. Sigler recommended the child to be placed at East Hickman Elementary School.

The school system then recommended that the child be placed in what is

termed "180 degree class" (TR 56-57). This is a self contained class for children with behavior problems. The child was to be phased in school over a period of weeks. The child would begin by attending class for only a short period of time each day while accompanied by her foster parents. The class proposed consisted of all boys with behavioral problems (TR 61). It is also clear that the proposed class was for sixth graders because the school did not have a fifth grade class (TR 309-310). The child had been retained in the fourth grade and scheduled to repeat from 1999 - 2000 (TR 35-36). Furthermore, the child had been placed on homebound services for several months of the 1999-2000 school year (TR 54).

The foster parents reviewed this placement proposed and placed the child at Benton Hall School at their own expense (TR 64). Benton hall is a licensed regular and special education school by the State of Tennessee (TR 142.)

The class at Benton Hall was a fifth grade class with eight other students and an assistant with boys and girls attending the class (TR 143.) The child has had no behavioral problems while at Benton Hall (TR 116.)

The foster parents brought this dueprocess hearing requesting reimbursement in the amount of \$7,150 for tuition at Benton Hall and travel expenses in the amount of \$3,227.40.

#### FINDINGS OF FACT CONCLUSIONS OF LAW

Both the Plaintiff and Defendant cite Board of Education v. Rowley 458 U.S. 176 (1982) which held that children with disabilities must receive a “free appropriate public education that is sufficient to confer education benefit.” Based upon the facts it is clear that the school system did not provide a free appropriate public education that conferred educational benefits to this child for the year 1999-2000 or for the proposed placement at East Hickman Elementary School.

In early 1999 Dr. Sigler had conducted an evaluation based upon the information which he was provided. His opinion provided the school system with the necessary information to understand whether a child has a behavioral impairment. Subsequent to the evaluation the child had many problems at school which showed that she was unable to “maintain or build relationships with peers, teachers or other persons.” The school system at this point could not rely on the previous evaluation with the subsequent history of numerous problems. The school system was advised to determine if the child’s behavior was a manifestation of her disability by the Juvenile Judge in September 1999.

When the evaluation was conducted by Dr. Sigler in May 2000 almost eight months had passed since being in Juvenile Court and fourteen months had passed since the previous evaluation. This would certainly not amount to a free appropriate public education under any rational basis.

The proposed placement at East Hickman Elementary School was not

appropriate as a placement for this child since the class was designed for sixth graders and the class was composed of all boys with behavioral problems.

The placement at Benton Hall was an appropriate placement since it provided a class which was grade appropriate and is a licensed regular and special education school in the State of Tennessee.

In School Committee of Burlington v Department of Education 471 U.S. 359 (1985) reimbursement is proper where there is a placement in a private school that is appropriate and where public school systems programs are inappropriate. It is clear that Burlington applies to the facts in this case.

### CONCLUSION

Therefore, the Petitioner (child) is the prevailing party and the Respondent is ordered to reimburse the Petitioner for tuition and travel expenses set forth above. The school system is further ordered to reconvene a Multi-Disciplinary Team meeting and provide an Independent Education Program for the upcoming school year that will provide an appropriate educational placement.

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Honorable Richard H. Walker  
Administrative Law Judge  
Tennessee Department of Education

Certificate of Service

I, Richard H. Walker, do hereby certify that I have forwarded a copy of the foregoing Opinion to Mr. Gary Buchanan at 2416 21<sup>st</sup> Avenue South, Nashville, Tennessee 37212 and Ms. Dana Dye at P.O. Box 11, 105 West End Avenue, Centerville, Tennessee 37033 by placing same in the United States Mail postage being fully prepaid.

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Richard H. Walker  
Administrative Law Judge  
Tennessee Department of Education